

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2702 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J. SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PRAGNABEN MOTISINH CHAUHAN & ORs

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2702 of 2001
MR SAURABH J MEHTA for Petitionesr Nos. 1-10
MR PR ABICHANDANI AGP for Respondents Nos. 1&2
Respondent NO. 3 :: Served

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 27/06/2002

ORAL JUDGEMENT

Heard the learned counsel Mr. Saurabh J. Mehta
for the petitioners and learned AGP Mr.P.R Abichandani
for the respondents nos. 1 & 2. No one appears for the

respondent no. 3-Principal, though duly served.

The petitioners are the regular students of PTC. After completing XIIth Standard, they applied for admission in PTC. They have been given admission by Methodist Teachers' Training College for Women, Godhra [Annexure-A].

In February, 2001, in all, 50 Examination Forms were filled-in by different students. The same were forwarded to the respondent no. 2-the Director of Primary Education, Gandhinagar. However, out of 50 forms, 40 were accepted and 10 were not. Coming to know about the same, the present petitioners, whose forms were not accepted. They approached the Hon'ble Minister for Education of the State of Gujarat for allowing them to appear in the examinations commencing from 20th April, 2001 [Annexure-B], but their forms were not accepted. Hence, this petition.

It seems that the Director of Primary Education gave his approval only for 30 seats to Methodist Teachers' Training College for Women but 40 forms were accepted and the remaining 10 forms were not accepted. Therefore, they have filed this petition before this Court under Article 226 of the Constitution and prayed that the impugned action of the respondents of not accepting the forms and of not allowing the petitioners to appear in the examinations be quashed and set-aside and the respondents be directed to accept the forms of the petitioners-students; and further be pleased to direct the respondents to allow the petitioners-students to appear in the exam which was going to commence from 20th April, 2002. During the pendency and final disposal of this petition, it is prayed that the respondents be directed to accept forms of the petitioners-students and allow them to appear in the examination.

On 16th April, 2001 when this petition was placed before my learned Brother Kundan Singh, J., it was straightaway admitted. Rule was issued making it returnable on 1st May, 2001. In the meanwhile, the respondents were directed to accept the examination forms of the petitioners-students and also to permit them to appear at the examinations commencing from 20th April, 2001. However, it was made clear that the petitioners shall not claim any equity on the basis of the interim order.

In pursuance of the aforesaid interim order passed by the learned Single Judge of this Court, the

respondents accepted the forms and permitted the students to appear in the examinations. The result of the examinations held in April, 2001 was declared by the respondents but the results of the present petitioners were withheld, therefore, the petitioners filed Civil Application in this writ petition and prayed that the respondents be directed to declare the result of the petitioners. That Civil Application No. 8380 of 2001 filed in this petition came to be allowed by my learned Brother K.M Mehta, J. on 8th August, 2001 and the respondents were directed to declare results of the petitioners. Aggrieved by the said order dated 8th August, 2001, the respondents filed Letters Patent Appeal No. 1094 of 2001 before the Division Bench of this Court, which was allowed by the Division Bench on 10th October, 2001 and the interim order passed by the learned Single Judge on Civil Application was set-aside and directed the learned Single Judge to hear and decide this petition as early as possible.

Learned counsel Mr.Mehta appearing for the petitioners submitted that finding strong prima facie case in favour of the petitioners, when the learned Single Judge of this Court straightway admitted the petition on 16th April, 2001 and permitted the petitioners to appear in the examinations by interim order, then their results should be declared because the respondents had never challenged that interim order by which the petitioners were permitted to appear in the examinations. It was submitted by the learned counsel Mr. Mehta that after giving admission to the students, if the results are not declared then the whole purpose would be frustrated.

However, the learned AGP Mr. Abichandani appearing for the respondents nos. 1 & 2 vehemently submitted that in this case, with the connivance of the Institution, the petitioners-students got admission and by way of interim order, they appeared in the examinations but that would not confer any right to them claiming declaration of their results. He submitted that while admitting this writ petition and granting interim order, the learned Single Judge of this Court made it clear that the petitioners shall not claim any equity on the basis of the interim order. He submitted that there were only 30 seats sanctioned but because of the mischief played by the Deputy Director of Primary Education; against whom inquiry is pending, 10 more students were given admission by 18th August, 2000. Thereafter, the Institution played mischief and gave admission to 10 more students; nine of them are the present petitioners. He,

therefore, submitted that this petition should be dismissed.

However, learned counsel Mr. Mehta for the petitioners vehemently submitted that if 10 more students who were beneficiaries of the mischief of Deputy Director can be permitted to appear in the examination and if their results are declared, then, the respondents cannot treat differently the present petitioners who have been given admission by the Institution above the sanctioned strength. Mr.Mehta has submitted that all the students studied for the whole year and by way of interim order, they were permitted to appear in the examination that interim order was never challenged by the otherside before the Division Bench of this Court. It is only when the learned Single Judge of this Court granted Civil Application No. 8380 of 2001 and directed them to declare result, at that time they woke-up and challenged the same before the Division Bench by filing Letters Patent Appeal. It is true that the Division Bench has set-aside that interim order and direct this Court to hear and decide the present petition of the petitioners. However, the fact remains that the otherside has never thought it fit to challenge the first interim order granted by this Court of the learned Single Judge whereby the petitioners were permitted to appear in the examinations. Having appeared in the examinations, I am of the considered opinion that withholding of their results would be travesty of justice. More particularly when against the sanctioned strength of 30, ten more students were permitted to appear in the exam and their results were declared. The only difference in this case is that it is alleged against the present petitioners that they got admission with the connivance of the Institution whereas those 10 students whose results are declared they got admission because of the mischief played by the Deputy Director, against whom inquiry is pending. Therefore, if the results of the present petitioners are withheld then it would amount to violation of Article 14 of the Constitution.

In view of the above discussion, this petition is allowed. The petitioners who have been permitted to appear in the examinations commencing 20th April, 2001 are entitled to have result of the said examinations of Ist PTC examinations. The respondents shall declare their results of Ist PTC Examinations held in April, 2001 forthwith, and if they are found successful, then, they may be given admission in the IInd PTC Courses. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

[B.J Shethna, J.]

Prakash*